

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9535 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MARTHA C MECWAN

Versus

MANAGER

Appearance:

MR GIRISH PATEL for Petitioner
MR MP PRAJAPATI for Respondent No. 1
RULE SERVED for Respondent No. 2
MR V PANCHOLI, AGP, for Respondent No. 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/06/1999

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner - a primary teacher in the Methodist Girls Practising School, Godhra - has challenged the decision dated 30th August 1993, passed by Gujarat Primary Education Tribunal, Ahmedabad, in Application No.111 of 1992 insofar as the Tribunal considered the petitioner as an untrained teacher and so also the stand of the respondents herein in treating the petitioner as an untrained teacher on the ground that the petitioner does not possess the qualification of Primary Teacher's Certificate (PTC) and that the qualification of B.A., B.Ed possessed by the petitioner is not sufficient to consider the petitioner as a trained primary teacher. The learned counsel for the petitioner submitted that the petitioner was paid the salary and allowances as per the pay scale of trained primary teacher from the date of her appointment till April 1993 and thereafter respondents started paying the salary as per the pay scale of untrained primary teacher from May 1993 and even sought to recover the difference of amount for the earlier period. This Court restrained the respondents from recovering the said amount during pendency of this petition.

2 The controversy raised in this petition is covered by the decision of this Court in SATISHCHANDRA BHAILALBHAI SHAH V. STATE OF GUJARAT 1984 (1) GLR 655 and the decision dated 6th February 1996 of this Court in Special Civil Application No.2903 of 1988. The State Government through its Resolution dated 1st July 1978 decided to exempt the Graduate Teachers with Bachelor of Education (B.Ed.) qualification appointed on or before 1.1.1977 from undergoing training for PTC. but the graduate teachers with B.Ed. qualification appointed after 1.1.1977 were required to obtain the PTC qualification and without such qualification they were ordered to be treated untrained teachers in primary schools. This Court held that B.Ed. is a higher qualification and graduates with B.Ed. qualification are recognised as teachers for teaching Primary Teachers' Course (PTC) and therefore a person qualified to teach PTC students cannot be said to be not qualified for teaching primary school students. It is held that teachers possessing higher qualification cannot on that ground be treated as untrained teachers. This Court also found no rationale in fixing the cut off date being 1.1.1977. In the subsequent decision dated 6.2.1996 also this Court deprecated the stand of the respondent in not recognising the graduate teachers with B.Ed. qualifications as trained primary school teachers in spite of the judgement in case of SATISHCHANDRA

BHAILALBHAI (supra). It was observed that such a stand amounts to disobedience of the directions of this Court and apart from torturing the individual teachers it also unnecessarily adds burden to already overburdened judiciary. That petition was accordingly allowed and the respondents were directed to pay costs which were quantified at Rs.1,000.

3. Having heard the learned counsel for the parties, this Court holds that there is no reason why the aforesaid decision of this Court reported in case of Satishchandra Bhailalbhai (supra) and the last decision dated 2nd June 1996 rendered in Special Civil Application No.2903 of 1988 should not be followed in this case also. This Court has already held that a primary teacher possessing the qualification of Graduation with B.Ed. cannot be denied the status and salary of a trained primary teacher.

4 The petition is accordingly allowed. The impugned decision dated 30th August 1993 of the Primary Education Tribunal, Ahmedabad, rendered in Application No.111 of 1992 insofar as the same directed the respondents to treat the petitioner as an untrained teacher is set aside and it is directed all the respondents shall treat the petitioner as a trained primary teacher and pay the petitioner salary and allowances on that basis.

Since the petitioner was already paid the salary and allowances on this basis from the date of appointment till April 1993 and since the order of recovery of difference of salary sought to be recovered from the petitioner's salary was stayed during the pendency of this petition, the respondents shall not make any recovery of the amount of salary and allowances already paid to the petitioner on the basis that the petitioner is a trained primary teacher.

The difference of salary for the subsequent period i.e. from May 1993 onwards on the basis that the petitioner is a trained primary teacher shall be paid to the petitioner as expeditiously as possible. In order to carry out the aforesaid direction, respondent no.1 school management shall submit the necessary bills to the concerned authorities within one month from the date of receipt of the writ or a certified copy of this judgement, whichever is earlier. Thereafter, within a period of three months from the date of receipt of the bills from the school management, respondents nos.2 to 4 shall pay the arrears of difference of salary to the

petitioner.

5 Rule is made absolute accordingly with costs quantified at Rs.1,000, which shall be paid by respondents nos.2 to 4 along with the arrears of difference of salary.

(mohd)